

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF	)	
PENNSYLVANIA, Department of Public	)	Civil Action No. 05 - 1345
Welfare,	)	
	)	Chief Judge Donetta W. Ambrose /
Plaintiff,	)	Magistrate Judge Lisa Pupo Lenihan
	)	
v.	)	
	)	Doc. No. 23
UNITED STATES OF AMERICA and	)	
UNITED STATES DEPARTMENT OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Defendants.	)	

**ORDER**

Defendants filed a Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) and (6) on December 19, 2005. After the Court's order granting Plaintiff an extension of time to file a response to Defendants' Motion to Dismiss, Plaintiff filed a Brief in Opposition to Defendants' Motion to Dismiss and a Motion for Partial Summary Judgment, supporting brief and concise statement of undisputed facts on February 13, 2006. Thereafter, Defendants filed an unopposed Motion for Extension of Time to file a consolidated brief in response to Plaintiff's Partial Motion for Summary Judgment and in reply to Plaintiff's responsive brief in opposition to Defendants' Motion to Dismiss. The Court granted Defendants' request for an extension until March 31, 2006 to file a consolidated brief. The Court has scheduled oral argument on the dispositive motions on April 24, 2006 at 2:00 p.m.

On March 22, 2006, Defendants' filed a Motion to Stay Proceedings Related to Plaintiff's Motion for Partial Summary Judgment, asking that the Court refrain from considering Plaintiff's summary judgment motion until after it has decided Defendants' motion to dismiss.

Alternatively, Defendants requested that should the Court deny the motion for stay, it be granted an extension until April 20, 2006, to file a consolidated brief. Plaintiff filed a response to Defendants' motion for stay on March 23, 2006 opposing the request for stay.

Within this Court's discretionary powers is the power to stay proceedings. *Gold v. Johns-Manville Sales Corp.*, 723 F.2d 1068, 1077 (3d Cir. 1983) (citing *Landis v. North Am. Co.*, 299 U.S. 248, 254-55 (1936); *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 665-66 (1978)). This power "is incidental to the power inherent in every court to schedule disposition of the cases on its docket so as to promote fair and efficient adjudication." *Warcloud v. Horn*, No. Civ.A. 97-3657, 1999 WL 286444, \* 1 (E.D.Pa. May 5, 1999) (quoting *Gold*, 723 F.2d at 1077). In deciding a motion for stay, the Court must "weigh the competing interests and maintain an even balance." *Id.* (quoting *Landis*, 299 U.S. at 255). This balancing requires the court to "consider whether 'there is even a fair possibility that the stay would work damage on another party.'" *Id.* (quoting *Dentsply Int'l, Inc. v. Kerr Mfg. Co.*, 734 F.Supp. 656, 658 (D.Del. 1990) (quoting *Gold*, 723 F.2d at 1076; *Landis*, 299 U.S. at 255)). For the Court to issue a stay, the moving party must demonstrate a "clear case of hardship or inequity." *Id.* (quoting *Gold*, 723 F.2d at 1075-76 (quoting *Landis*, 299 U.S. at 255)).

The Court finds that Defendants have not established a clear case of hardship or inequity. In support of their motion for stay, Defendants submit that the jurisdictional issue must be resolved before proceeding to the merits of an action, and that the issue of ripeness is a Rule 12(b)(1) jurisdictional issue. Defendants have not stated, however, how they will be prejudiced by the Court's denial of their request for a stay. Although the Court agrees with the Defendants that it is required to resolve the jurisdictional issue prior to proceeding to the merits, the Court does not

agree with Defendants that a jurisdictional challenge in the form of a motion to dismiss automatically forecloses the briefing of a motion for summary judgment. The Court is well aware of its obligation to resolve the jurisdictional issue first and therefore views the Defendants' request to stay proceedings related to the summary judgment motion as unnecessary and superfluous. Moreover, the arguments raised in Plaintiff's motion for partial summary judgment are related to and partially in response to Defendants' arguments in support of their motion to dismiss. Indeed, Defendants previously agreed that filing a consolidated brief incorporating its response to Plaintiff's summary judgment motion and its reply to Plaintiff's brief in opposition to the motion to dismiss would lead to a more efficient resolution of this case. The Defendants cannot now argue that a stay would be more efficient. In addition, the Court would like the benefit of Defendants' brief in opposition to Plaintiff's motion for partial summary judgment and its reply brief on the motion to dismiss to more fully understand the legal positions of the parties prior to ruling on the motion to dismiss. If the Court ultimately determines that it lacks subject matter jurisdiction over this case, then Plaintiff's motion for partial summary judgment will be deemed moot.

Therefore, in consideration of the above,

**IT IS ORDERED** this 24th day of March, 2006, that Defendants' Motion to Stay Proceedings Related to Plaintiff's Motion for Partial Summary Judgment (Doc. No. 23) is **DENIED**.

**IT IS FURTHER ORDERED** that Defendants' request for an extension of time to file a consolidated brief in response to Plaintiff's Partial Motion for Summary Judgment and in reply to Plaintiff's brief in opposition to their Motion to Dismiss is **GRANTED**. Defendants shall file a consolidated brief no later than **April 20, 2006**. No further extensions shall be granted.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(A), and Rule

72.1.3(B) of the Local Rules for Magistrate Judges, the parties are allowed ten (10) days from the date of service of a copy of this Order to appeal this Order to Judge Ambrose. Any party opposing the appeal shall have seven (7) days from the date of service of the appeal to respond thereto. Failure to file a timely appeal may constitute a waiver of any appellate rights.

BY THE COURT:

s/ Lisa Pupo Lenihan  
LISA PUPO LENIHAN  
U.S. MAGISTRATE JUDGE

cc: Honorable Donetta W. Ambrose  
Chief United States District Judge

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